

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Comprehensive Review of Licensing and) IB Docket No. 12-267
Operating Rules for Satellite Services)

**JOINT COMMENTS OF SES AMERICOM, INC.
AND NEW SKIES SATELLITES B.V.**

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SUMMARY

SES Americom, Inc. and New Skies Satellites B.V. (together, “SES”) strongly support the Commission’s efforts to update, streamline, and rationalize the Part 25 rules. As SIA members, we endorse the comprehensive SIA pleadings in this proceeding and write separately here to address certain key issues raised in the Further Notice.

First, because the two-degree spacing policy is important in facilitating new entry and supporting robust competition in the satellite services market, SES urges the Commission to retain the policy but update it to align more closely with current operational realities. In particular, the Commission should adjust baseline power levels for digital carriers to reflect typical levels – SES proposes an increase in downlink EIRP levels to 3 dBW/4 kHz for digital carriers in the conventional and extended C-bands and to 13 dBW/4 kHz for digital carriers in the conventional and extended Ku-bands. These changes will help mitigate the “future neighbor” problem, but SES also proposes that the Commission alter its policy to permit an operator that has coordinated above-baseline power levels and notified the Commission of those higher levels to maintain those levels notwithstanding the arrival of a new adjacent satellite. SES supports the Commission’s proposal to allow certification of two-degree compliance, but the Commission should revise the applicable rule language to clarify that applicants who prefer to demonstrate a network’s two-degree compatibility by submitting an interference analysis may continue to do so.

SES agrees with other satellite parties that the Commission should modify its procedures to permit the International Bureau to forward materials to the ITU before a full-scale satellite license application is on file and publicly available. This change will address the “claim-jumping” problem that can occur when a party becomes aware through a Commission

license application of a proposed network and has the opportunity to gain date priority over the U.S. by pursuing an ITU filing for the same frequencies and location through another administration that has more expedited processes. Rather than imposing a bond to deter warehousing, the Commission should set a short, 90-day deadline for filing a full license application once the ITU materials have been forwarded so that a prospective applicant cannot lock up the spectrum and orbital location for a lengthy period.

SES also urges the Commission to streamline its milestone procedures by setting standards that allow licensees to demonstrate compliance without submitting extensive, competitively-sensitive materials. Once a milestone showing is made, it should be deemed granted in 60 days unless the Commission makes a contrary finding within that period. In SES's view, reform of the bond framework is not a priority, but if the Commission does decide to pursue changes, SES supports exploration of an escalating bond to encourage return of unused spectrum sooner rather than later.

Finally, the Commission should take this opportunity to review its policies regarding foreign-licensed satellites. Most importantly, the Permitted Space Station List should be expanded to include all foreign-licensed payloads on geostationary satellites that have been authorized to communicate with U.S. earth stations in any FSS band. The Commission should also take into account the impact of any rule changes being considered in this proceeding on foreign-licensed satellites serving the U.S. market.

TABLE OF CONTENTS

SUMMARY.....i

I. THE COMMISSION SHOULD RETAIN, UPDATE, AND EXPAND ITS TWO-DEGREE SPACING POLICIES..... 2

A. The Two-Degree Spacing Policy Serves Important Public Interest Goals 3

B. Baseline Levels Should Be Increased to Reflect Current Satellite Parameters and Extended to Other FSS Bands..... 6

C. The Commission Should Take Steps to Mitigate the “Future Neighbor” Problem 7

D. The Commission Should Allow Applicants to Either Demonstrate or Certify Two-Degree Compliance 8

II. THE COMMISSION SHOULD ALTER ITS POLICIES REGARDING ITU FILINGS BUT MUST TAKE STEPS TO PREVENT WAREHOUSING..... 10

III. SES SUPPORTS REVIEW OF SATELLITE MILESTONE AND BOND REQUIREMENTS 13

IV. THE COMMISSION SHOULD REVIEW RULES CONCERNING U.S. MARKET ACCESS BY FOREIGN SATELLITE LICENSEES 16

A. The Permitted Space Station List Should Be Expanded 16

B. The Commission Should Consider the Impact of Any Rule Changes on Foreign-Licensed Satellites..... 18

V. CONCLUSION 20

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**JOINT COMMENTS OF SES AMERICOM, INC.
AND NEW SKIES SATELLITES B.V.**

SES Americom, Inc. (“SES Americom”) and New Skies Satellites B.V. (“New Skies,” and together with SES Americom, “SES”) hereby submit these comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹ SES commends the Commission for undertaking this thorough and much-needed comprehensive review of the Part 25 rules for operation of satellite space and earth stations in order to afford satellite system “licensees as much operational flexibility as possible consistent with minimizing harmful interference and easing administrative burdens on licensees, applicants, and the Commission.”² SES has participated actively in the development of the Satellite Industry Association (“SIA”) comments in this proceeding, and we fully endorse the positions set forth therein with respect to the Commission’s proposals for Part 25 reform.³ SES writes separately here to highlight the company’s positions on certain key issues presented in the Further Notice.

¹ *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Further Notice of Proposed Rulemaking, IB Docket No. 12-267, FCC 14-142 (rel. Sept. 30, 2014) (“Further Notice”).

² *Id.* at ¶ 2 (footnote omitted).

³ Comments of the Satellite Industry Association, IB Docket No. 12-267 (filed Jan. 29, 2015) (“SIA Comments”).

SES is a world-leading satellite operator, providing reliable and secure satellite communications solutions to broadcast, telecommunications, corporate and government customers worldwide. SES Americom, New Skies and their affiliates operate a fleet of 54 geostationary orbit (“GSO”) satellites that are complemented by a network of teleports and offices located around the globe. This far-reaching infrastructure enables SES customers to reach 99% of the world’s population. Over two dozen SES GSO Fixed-Satellite Service (“FSS”) spacecraft serve U.S. customers pursuant to Commission authority, providing capacity for broadcast and cable video and audio distribution, VSAT data networks, rural and remote communications, cellular backhaul, and service to government agencies. Virtually every U.S. cable and Direct Broadcast Satellite household receives some of its programming via the SES fleet. SES also has one of the largest satellite “neighborhoods” for the U.S. radio programming industry.

SES urges the Commission to act expeditiously to enact the revised regulatory framework for satellite services put forth in the Notice, with the changes discussed herein and in the SIA Comments. By overhauling Part 25, the Commission will streamline the licensing process, reducing administrative burdens on Commission staff and applicants alike, and speeding the deployment of an evolving and expanding range of vital satellite services.

I. THE COMMISSION SHOULD RETAIN, UPDATE, AND EXPAND ITS TWO-DEGREE SPACING POLICIES

SES strongly supports the view expressed in the Further Notice that the Commission should continue to apply its two-degree spacing policy.⁴ SES has previously noted that the existing framework can be improved by “establishing a more complete set of baseline

⁴ Further Notice at ¶ 44.

power levels for common FSS bands,”⁵ and we support the Commission’s proposals to adopt values for additional frequency bands.⁶ In order to more accurately reflect current typical space station parameters, the baseline power levels set forth in the rules for operating in a two-degree environment need to be updated, and SES proposes specific values below. The Commission should also consider further steps to address the “future neighbor” problem and clarify that the proposal to allow applicants to certify compliance with two-degree parameters is an alternative to demonstrating compliance rather than a replacement for such demonstration of compliance. With these changes, the Commission’s two-degree spacing policy will continue to serve the public interest goals of facilitating new entry and enhancing competition in the satellite services market.

A. The Two-Degree Spacing Policy Serves Important Public Interest Goals

As the Further Notice explains, the Commission adopted the two-degree spacing policy in 1983 “in order to increase, to the maximum feasible extent, the number of orbital locations for GSO FSS space stations that can provide service in the United States in the conventional C- and Ku- bands.”⁷ When rules for GSO FSS operations in the 20/30 GHz band were developed, the Commission similarly adopted a two-degree spacing framework for those services.⁸

⁵ *Id.* at ¶ 42, quoting Comments of SES Americom, Inc. in GN Dkt No. 14-25 filed Mar. 31, 2014 (“SES Process Reform Comments”) at 4.

⁶ Further Notice at ¶¶ 49-50.

⁷ *Id.* at ¶ 36, citing *Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions*, CC Docket No.81-704, Report and Order, 48 FR 40233 (1983).

⁸ Further Notice at ¶ 36, citing *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite Service Use*, IB Docket No. 98-172, Report and Order, 15 FCC Rcd 13430 (2000).

In response to an inquiry about the two-degree spacing policy in the Commission’s Process Reform Report,⁹ satellite commenters agreed that the policy has enhanced efficient use of spectrum and orbital resources. DIRECTV, for example, stated that the two-degree spacing policy “has been the basis for efficient use of valuable spectrum and orbital resources ever since” it was adopted thirty years ago.¹⁰ SES argued that “two-degree spacing is central to the Commission’s regulatory framework for efficient, interference-free satellite operation,” observing that “[b]y creating some level of certainty with baseline uplink and downlink power levels, the existing framework has facilitated rapid market entry by multiple satellites, resulting in a U.S. market that is extremely well served with commercial satellite capacity.”¹¹ SES and others urged the Commission to take the opportunity presented by this review of the Part 25 rules to update and improve the two-degree framework.¹²

Even Intelsat, the lone party suggesting that the Commission consider abolishing two-degree spacing, acknowledged that the policy has been effective in increasing available orbital resources for domestic satellites.¹³ But Intelsat fails to show a basis for eliminating the policy in favor of relying on international coordination priority. To the contrary, such a radical shift in the Commission’s rules would primarily benefit Intelsat – given its history as an

⁹ *Report on FCC Process Reform*, GN Dkt No. 14-25 (Staff Working Group, Feb. 14, 2014) (“Process Reform Report”) at 72.

¹⁰ Comments of DIRECTV, LLC in GN Dkt No. 14-25 filed Mar. 31, 2014 (“DIRECTV Process Reform Comments”) at 9.

¹¹ SES Process Reform Comments at 4.

¹² *See id.*; DIRECTV Process Reform Comments at 9; Comments of EchoStar Satellite Operating Company, EchoStar Technologies LLC, and Hughes Network Systems, LLC in GN Dkt No. 14-25 filed Mar. 31, 2014 (“EchoStar Process Reform Comments”) at 11-12 (the “Commission should update its two-degree spacing policy” to accord greater flexibility to operators “while maintaining the two-degree policy as the industry standard”).

¹³ Comments of Intelsat License LLC in GN Dkt No. 14-25 filed Mar. 31, 2014 (“Intelsat Process Reform Comments”) at 5-6.

intergovernmental organization, Intelsat has many of the oldest satellite network filings – but would deter new entry and hinder competition.

Intelsat implies that the large number of U.S.-licensed space stations means that the two-degree spacing policy has fulfilled its purpose and is no longer needed.¹⁴ Intelsat doesn't explain, however, why a technical framework defining acceptable power levels would no longer be necessary simply because the majority of the orbital slots over the U.S. are filled. If anything, as the satellite arc gets more congested, having a default set of operational standards becomes even more important to lay the groundwork for additional entry.

Similarly, Intelsat's claim that the two-degree spacing policy puts U.S. satellite licensees at a disadvantage relative to foreign-licensed operators¹⁵ is misplaced. To the contrary, the Commission's typical conditions for both U.S. satellite licensees and foreign-licensed operators granted U.S. market access require compliance with the two-degree spacing parameters unless higher levels have been coordinated with adjacent satellites.¹⁶ This even-handed application of Commission rules is consistent with the Commission's obligations pursuant to international trade agreements and with the pro-competitive framework for satellite services to U.S. customers.

¹⁴ *See id.*

¹⁵ *See id.* at 6-7.

¹⁶ *See, e.g., SES Americom, Inc.*, File No. SAT-MOD-20140207-00020, grant-stamped April 10, 2014, Attachment to Grant at 3, ¶ 15; *New Skies Satellites B.V.*, File No. SAT-MPL-20130906-00114, grant-stamped Feb. 4, 2014, Attachment to Grant at 3, ¶ 11; *New Skies Satellites B.V.*, File No. SAT-PPL-20120717-00117, grant-stamped Aug. 1, 2013, Attachment to Grant at 5, ¶ 20; *Hispasat, S.A.*, File No. SAT-PPL-20130430-00064, grant-stamped Dec. 20, 2013, Attachment to Grant at 1, ¶ 4; *Intelsat License LLC*, File No. SAT-MOD-20120713-00110, grant-stamped May 21, 2014, Attachment to Grant at 2-3, ¶ 7; *Intelsat License LLC*, File No. SAT-MOD-20130322-00052, grant-stamped Oct. 23, 2013, Attachment to Grant at 2, ¶ 14; *Intelsat License LLC*, File No. SAT-RPL-20120216-00018, grant-stamped May 25, 2012, Attachment to Grant at 3, ¶ 13; *Intelsat License LLC*, File No. SAT-LOA-20110610-00105, grant-stamped Oct. 9, 2012, Attachment to Grant at 2, ¶ 7.

Intelsat also raises concern about the impact of the “future neighbor” issue on an operator’s ability to ensure continuity and quality of service,¹⁷ but this discrete issue does not justify abandoning two-degree spacing altogether. Instead, as discussed below, the Commission should maintain its two-degree spacing policy but make adjustments to give satellite operators more certainty that they can continue to operate within the parameters needed to provide high-quality, long-term services to customers.

B. Baseline Levels Should Be Increased to Reflect Current Satellite Parameters and Extended to Other FSS Bands

Although SES supports continued reliance on the Commission’s two-degree framework, SES emphasizes that some of the specific power levels for digital carriers set forth in the rules need to be revised to align more closely with current satellite parameters. As updated, the levels should also be applied to additional FSS bands to ensure that a reasonable baseline set of operational characteristics is in place for conventional and extended C-band,¹⁸ conventional and extended Ku-band, and 20/30 GHz band spectrum.

The table below sets forth the current limits for digital carriers, the Commission’s suggested additions, and the SES proposals for higher power levels in certain instances.

¹⁷ Intelsat Process Reform Comments at 6.

¹⁸ SES also proposes a revision to the definition of the extended C-band set forth in the Further Notice. Specifically, the current definition includes the 6725-7025 MHz band but omits the associated downlink band spectrum, 4500-4800 MHz. As revised to correct this omission the definition would be:

Extended C-band. As used in this part, this term refers to the 3600-3700 MHz (space-to-Earth), 4500-4800 MHz (space-to-Earth), 5850-5925 MHz (Earth-to-space), 6425-6700 (Earth-to-space), and 6700-7025 MHz (bi-directional) FSS frequency bands.

Spectrum	Current Levels	FCC Proposal	SES Proposal
Conv. C-band	No DL EIRP -2.7 dBW/4 kHz UL PSD	1 dBW/4 kHz DL EIRP No change to UL	3 dBW/4 kHz DL EIRP No change to UL
Ext. C-band	No DL or UL levels	Same as conv. C-band	Same as above
Conv. Ku-band	10 dBW/4 kHz DL EIRP -14 dBW/4 kHz UL PSD	No change	13 dBW/4 kHz DL EIRP No change to UL
Ext. Ku-band	No DL EIRP -14 dBW/4 kHz UL PSD	10 dBW/4 kHz DL EIRP No change to UL	13 dBW/4 kHz DL EIRP No change to UL

The rationale for the increases proposed by SES is simple – to ensure that the coordination triggers set forth in the Commission’s two-degree spacing rules more closely reflect typical operational characteristics for space stations. In preparing its recommendations, SES reviewed information about current satellites in the SES and Intelsat fleets and determined that roughly 80% of Ku-band satellites and more than 90% of C-band satellites are operating at downlink EIRP levels that exceed those specified in the Commission’s two-degree spacing rules today. Such a high proportion of exceedances clearly suggests that the levels specified in the rules are out of step with current operational realities, and that upward adjustments are warranted. Revising the two-degree levels as proposed by SES would bring a majority of both C- and Ku-band satellites into compliance with the baseline levels.¹⁹

C. The Commission Should Take Steps to Mitigate the “Future Neighbor” Problem

As the Further Notice discusses, one aspect of the existing two-degree spacing policy that has raised concern is the possibility that a satellite operator with established services would have to significantly alter its operations to accommodate a new two-degree neighbor.²⁰ Specifically, two scenarios could arise: the entry of a new competitor may subject existing non-

¹⁹ The Commission also proposes to extend the existing levels for analog carriers to band segments where no limits currently apply. Further Notice at ¶ 50 & proposed rule 25.140(a)(3). SES supports these proposals.

²⁰ Further Notice at ¶ 37.

conforming operations to potential interference, and a prior operator that has been exceeding the routine limits reflected in the current rules may be required to reduce its power.²¹

SES does not believe any change to Commission policies is needed with respect to the first issue. Instead, consistent with the two-degree spacing framework, it is appropriate to allow a new neighbor to operate at power levels up to the baseline limits defined in the two-degree spacing rules regardless of whether there may be an impact on existing adjacent networks. Thus, a satellite operator with non-conforming operations would need to take into account the possibility of future interference if a new, two-degree compliant network is introduced in an adjacent orbital location.

SES supports adoption of a mechanism to address the second problem, however. Specifically, if an operator has coordinated power levels above the two-degree baseline limits with its existing neighbors and has notified the Commission of those operating levels,²² it should not be required to reduce those levels because of a new adjacent entrant. Any such new entrant should be deemed to have adequate notice of the operating environment and should plan its system's capabilities accordingly.

D. The Commission Should Allow Applicants to Either Demonstrate or Certify Two-Degree Compliance

Finally, SES agrees that the Commission should permit an applicant to provide a certification of two-degree compliance as an alternative to submitting an interference analysis demonstrating that its proposed system conforms to the two-degree spacing framework. SES

²¹ *See id.*

²² *See id.* at ¶ 47 (seeking comment on a policy that would “require prior notification to the Commission of the details of non-conforming operation in a specific frequency range and coverage area”).

questions, however, whether the rule language proposed in the Further Notice is consistent with the Commission's expressed intention.

Specifically, the Commission states that it proposes to amend Section 25.140(a) so that an applicant for a space station in the conventional or extended C- or Ku-band spectrum or in the 20/30 GHz band to be located two degrees or more from the nearest co-frequency spacecraft "would not have to provide an interference analysis if it certifies that it will coordinate any uplink or downlink operation exceeding relevant routine limits with operators of co-frequency satellites within six degrees."²³ This suggests that an applicant would have the option of either submitting a compliance certification or an interference analysis. Yet the proposed new text of Section 25.140(a)(3), which would cover such situations, mentions only certification of compliance, not the alternative approach of providing an interference analysis.²⁴ In contrast, the proposed language addressing a request for a new satellite at less than two-degree spacing expressly makes both options available. Specifically, that rule states that the applicant "must either certify that the proposed operation has been coordinated with the operator of the co-frequency space station or submit an interference analysis demonstrating the compatibility of the proposed system with the co-frequency space station."²⁵ SES requests that the Commission revise Section 25.140(a)(3) to make clear that an applicant for a satellite to be located two or more degrees away from its nearest neighbor can similarly either demonstrate or certify its compliance with the two-degree spacing framework.

²³ *Id.* at ¶ 51.

²⁴ *See id.*, proposed Section 25.140(a)(3).

²⁵ *See id.*, proposed Section 25.140(a)(2).

II. THE COMMISSION SHOULD ALTER ITS POLICIES REGARDING ITU FILINGS BUT MUST TAKE STEPS TO PREVENT WAREHOUSING

SES agrees that in order to prevent “claim-jumping,” the Commission should establish a procedure to submit International Telecommunication Union (“ITU”) filings for FSS space stations in advance of the submission and public availability of an underlying satellite application. However, the Commission must also implement measures to deter possible abuses that would allow warehousing of spectrum and orbital locations.

The Further Notice observes that under existing practices, the International Bureau submits the necessary paperwork to begin the ITU registration process “only after a license application for the proposed space station operation has been filed with the Commission and the applicant has certified unconditional acceptance of cost recovery responsibility.”²⁶ As a result, another party who may be interested in a given orbital position has access to the publicly available satellite application on file at the Commission prior to the time when the U.S. submits its paperwork to the ITU. This advantage allows such a party to pursue an ITU filing through a foreign administration that may be received before the U.S. filing, thereby gaining date priority over the U.S. submission. The Commission expresses concern that prospective applicants may be deterred from availing themselves of the U.S. licensing process by the possibility of such “claim jumping” and may choose instead to proceed in a jurisdiction that is willing to submit an ITU filing more expeditiously, without requiring a detailed application for satellite operating authority.²⁷

²⁶ Further Notice at ¶ 7.

²⁷ *Id.*

The Commission's Process Reform Report invited comment on the Commission's ITU filing practices,²⁸ and SES and other satellite parties unanimously supported a change to permit the International Bureau to forward ITU documentation in advance of a satellite application being filed.²⁹ Some parties went further, suggesting that the submission of ITU materials should give the submitting party a period of exclusivity with respect to the requested orbital location. Specifically, Intelsat argued that a party submitting an ITU filing should be given a position in the queue and have up to two years to submit a completed satellite application.³⁰ EchoStar proposed a more complicated approach that would give a party exclusivity for a potentially much longer period of time without submitting an application – under EchoStar's suggested framework, an application would not need to be filed until three months following the submission of a coordination request to the ITU or the filing of an alternative expression of interest for the orbital location with the Commission, whichever occurs later.³¹

The Further Notice seeks comment on these proposals, but also recognizes that they create the potential for warehousing.³² Accordingly, the Commission suggests that it would impose a surety bond “payable if a party who has secured a spot in the first-come, first-served

²⁸ Process Reform Report at 65.

²⁹ See Further Notice at ¶ 8 & n.8, *citing* Comments of the Boeing Company in GN Docket 14-25 filed Mar. 31, 2014 (“Boeing Process Reform Comments”); DIRECTV Process Reform Comments; EchoStar Process Reform Comments; Intelsat Process Reform Comments; SES Process Reform Comments; Comments of ViaSat, Inc. in GN Docket No. 14-25 filed Mar. 31, 2014 (“ViaSat Process Reform Comments”).

³⁰ Intelsat Process Reform Comments at 4.

³¹ EchoStar Process Reform Comments at 11

³² Further Notice at ¶ 16.

queue defaults by failing to complete an acceptable license application on schedule or its license application is denied.”³³

SES shares the Commission’s concern about potential abuses of the new ITU filing procedure by parties whose primary purpose is not to make use of spectrum and orbital resources but to keep others from using them. However, SES suggests a different approach to addressing the issue. Specifically, SES proposes that the Commission adopt a shorter deadline for filing a complete space station application, such as 90 days following ITU receipt of the initial Advance Publication of Information (“API”) filing from the International Bureau. A 90-day period should be more than adequate time for a party to prepare the necessary Commission space station application after submitting the ITU materials.

Furthermore, if the Commission keeps the time limit for filing a full FCC application relatively brief, that would eliminate the need to impose an ITU-related surety bond. Instead, attempts to engage in warehousing would be deterred by the fact that the period of “cost-free” exclusivity would be brief. The exclusivity would expire unless the applicant demonstrates its commitment to use of the slot by submitting an application that carries a substantial filing fee and leads to a licensing procedure with the associated performance bond.

Thus, permitting ITU submissions to be made in advance of a satellite application but with a short, 90-day deadline to apply after the ITU paperwork is received would achieve the Commission’s objectives. It would avoid the “claim-jumping” problem identified in the Further Notice while decreasing the chance that a party would try to use the revised process to warehouse spectrum. If the Commission adopts a longer filing timeframe as proposed by Intelsat or EchoStar, SES agrees that imposing a surety bond would be required to prevent warehousing.

³³ *Id.* (footnote omitted).

Other measures may also be necessary to prevent abuse of the new policy with respect to ITU filings. Specifically, the Commission should consider whether to impose a limit on the number of ITU submissions that a party could request in a given time period.³⁴ Similarly, in cases where a party repeatedly requests ITU submissions without filing an application, the Commission will either need to apply the Section 25.159(d) “three strikes” rule, as suggested in the Further Notice,³⁵ or adopt alternative means to deter such behavior.

III. SES SUPPORTS REVIEW OF SATELLITE MILESTONE AND BOND REQUIREMENTS

SES agrees with SIA and others that revision of the Commission’s policies with respect to satellite construction milestones is needed to streamline required milestone compliance showings and add more predictability to the Commission review process. In particular, the Commission should take steps to reduce the need for licensees to submit confidential and competitively-sensitive data, cut back on the volume of information required for milestone showings, and set hard deadlines for decisions on milestone compliance. If the Commission decides to revise its bond policies, it should further explore the possibility of an escalating bond approach.

The Further Notice cites a variety of complaints regarding the existing administration of the satellite milestone rules and states that it is “worthwhile to consider whether alternative approaches might shorten review periods, reduce administrative burdens, and increase certainty for licensees.”³⁶ For example, although the Commission expresses concern

³⁴ EchoStar has suggested that if the Commission retains limits in Section 25.159(a), ITU submissions should be counted against those limits. *See* EchoStar Process Reform Comments at 11.

³⁵ Further Notice at ¶ 18.

³⁶ *Id.* at ¶ 28.

about whether licensee certifications can be relied on as the sole proof of milestone compliance, the Commission notes that such certifications may be acceptable if corroborated by affidavits from satellite manufacturers that also reflect receipt of appropriate payment.³⁷

SES urges the Commission to pursue such methods to standardize the information needed to demonstrate milestone compliance. SIA has proposed a set of specific requirements that should suffice to show that a licensee has met the construction commencement milestone.³⁸ The Commission could similarly distill the requirements for other milestones to their essential elements and require both the licensee and the manufacturer to provide supporting affidavits confirming that the required actions have been taken. Thus, in lieu of requiring a construction contract to be filed, the Commission could specify that the licensee and the manufacturer must jointly certify that a construction contract has been entered that meets the requirements set forth in Commission precedent. These requirements include: no significant delay between contract execution and construction commencement; no conditions precedent to construction or unresolved contingencies that might prevent construction from proceeding; payments spread throughout the contract term, including significant initial payments; no option to cancel without significant penalty to the licensee; identification of specific satellites to be built and their design characteristics; and specification of construction dates that comply with the milestone schedule in the license.

A similar list of required elements could be created for a CDR completion showing. For example, the Commission could require the licensee and manufacturer to provide a copy of the CDR meeting agenda and to jointly confirm by affidavit when and for how long the CDR team met and who participated. SES strongly agrees with SIA that the Commission's

³⁷ *Id.* at ¶ 29.

³⁸ SIA Comments, Section III.A.

recent practice of requiring submission of the complete CDR documentation package is unnecessary, presents the risk of inappropriate disclosure of confidential materials, and unduly prolongs Commission review of CDR milestone showings.³⁹

In each case, the milestone showing could be accompanied by a joint certification of the percentage of payments under the contract that have been made at that particular stage of construction. The Commission expresses doubt regarding how it would be able to determine whether such payments should be considered adequate,⁴⁰ but SES suggests that the Commission informally survey satellite manufacturers to determine what range of payment completion should suffice to confirm compliance with the various construction milestones. Ideally, the Commission would then issue a public notice reflecting those standards so that licensees would have a clear understanding of the Commission's expectations.

SES also supports SIA's proposal that a firm deadline be set for Commission consideration of milestone showings, so that absent a contrary determination, a milestone showing would automatically be deemed approved 60 days after filing.⁴¹ This change is necessary to prevent overly prolonged review of milestone compliance demonstrations that serves to undermine the pro-competitive purpose of the Commission's milestone framework.

In addition to inviting comment on milestone issues, the Further Notice also solicits input regarding potential changes to the performance bond. In SES's view, bond reform is not a priority, as the current system of bond assessment has proved reasonably workable. If the Commission nevertheless decides to revise the bond framework, SES would support

³⁹ See *id.*, Section III.B.

⁴⁰ Further Notice at ¶ 29.

⁴¹ See SIA Comments, Section III.C.

exploration of an escalating bond, as suggested in the Further Notice.⁴² In fact, SES suggested an escalating bond approach over a decade ago⁴³ for the very reasons the Commission cites here – encouraging licensees to give up unused spectrum and orbital resources sooner rather than later.⁴⁴ Thus, if the Commission determines that a change is needed, SES would support consideration of an escalating bond approach.

IV. THE COMMISSION SHOULD REVIEW RULES CONCERNING U.S. MARKET ACCESS BY FOREIGN SATELLITE LICENSEES

SES also urges the Commission to consider changes needed to simplify processes for use of foreign-licensed satellites by U.S. earth stations, consistent with applicable trade agreements and with enhancing competition in the satellite services market. In particular, the Commission should adopt an expanded definition of the Permitted Space Station List to facilitate and expedite use of foreign-licensed GSO satellites that have been authorized in any band to serve the U.S. market. The Commission should also ensure that it takes into account the implications for use of foreign-licensed satellites of any rule changes being discussed in this proceeding.

A. The Permitted Space Station List Should Be Expanded

The Further Notice seeks comment on proposals to expand the Permitted List beyond its current scope, which is limited to GSO FSS satellites authorized to serve the U.S. in the conventional C-band, the conventional Ku-band, and the 20/30 GHz band.⁴⁵ The

⁴² Further Notice at ¶ 32.

⁴³ *See Amendment of the Commission's Space Station Licensing Rules and Policies*, First Order on Reconsideration and Fifth Report and Order, 19 FCC Rcd 12637, 12656 (2004) (discussing, but rejecting, an SES Americom proposal to reduce bond amounts upon completion of milestones in order to penalize a licensee for warehousing spectrum longer).

⁴⁴ Further Notice at ¶ 32.

⁴⁵ *Id.* at ¶ 125.

Commission notes that SES has previously advocated modifying the list so that it identifies all U.S.- and foreign-licensed GSO satellites authorized to provide FSS in any band to earth stations located in the U.S., and also suggested adding a separate list of non-geostationary satellite orbit (“NGSO”) systems licensed by the Commission or approved to serve the United States in any FSS band.⁴⁶

The Commission should take this opportunity to adopt these changes to its Permitted List structure. As SES has previously explained, expanding the List to include payloads in FSS bands such as the extended C- and Ku-bands that have been licensed or approved for U.S. market access through any of the available market access mechanisms (space station license, a declaratory ruling, a letter of intent, or an earth station license) would reduce burdens on both U.S. earth station licensees and on the Commission. Specifically, by assembling in a single location information relevant to purchasers of space station capacity that is currently scattered in multiple places within the Commission’s International Bureau Filing System database, a unified Permitted List for GSO FSS spacecraft will serve as a convenient and complete reflection of available satellite capacity.

Intelsat’s objection that expansion of the Permitted List would compromise the Commission’s ability to address terrestrial coordination issues⁴⁷ is unfounded. The Commission would retain its ability to consider coordination matters in the context of individual earth station applications. Furthermore, Intelsat ignores the fact that terrestrial coordination is also required for earth stations operating in the conventional C-band, but that has not served as an obstacle to inclusion of conventional C-band spacecraft on the Permitted List. With the proposed expanded

⁴⁶ *Id.* at ¶ 126, *citing* Joint Reply Comments of SES Americom, Inc., New Skies Satellites B.V., and O3b Ltd. in IB Docket 12-267 filed Feb. 13, 2013.

⁴⁷ *See* Further Notice at ¶ 126, *citing* Reply Comments of Intelsat Licensee LLC in IB Docket 12-267 filed Feb. 13, 2013 at 10-11.

GSO Permitted List, earth station applicants seeking authority in any FSS frequency band will be able to designate the Permitted List as a point of communications, and such requests would be granted provided that the applicant has satisfied any band-specific coordination or other technical requirements in the rules or the terms of space station license or market access grant. The proposed new NGSO Permitted List would serve the same function, providing a convenient, consolidated reference point for NGSO FSS systems authorized to provide service in the United States.

In sum, an expanded Permitted List of GSO FSS spacecraft along with a separate list of approved NGSO systems would serve Commission objectives by streamlining procedures and reducing time spent on applications by applicants, licensees, and the Commission. SES accordingly requests that the Commission expand the definition of Permitted Space Station List for GSO FSS spacecraft and define and create a new NGSO Permitted List.

B. The Commission Should Consider the Impact of Any Rule Changes on Foreign-Licensed Satellites

More broadly, SES is concerned that in undertaking what is otherwise a comprehensive review of its rules with respect to satellite and earth station operations, the Commission has overlooked the potential implications of its actions for use of foreign-licensed satellites. In many cases, it may be appropriate for the Commission to simply apply rule changes in the same way to both applicants for U.S. licenses and foreign licensees seeking U.S. market access. However, there are some differences between foreign licensees and U.S. licensees that are relevant to Commission policy considerations and may dictate a different approach to the two categories. The Commission must take such differences into account in making its policy judgments.

As one example, the discussion in the Further Notice regarding practices for submitting ITU filings omits any mention of how market access requests for non-U.S.-licensed systems would fit into the new framework contemplated by the Commission.⁴⁸ Consistent with express Commission policies and U.S. treaty obligations as an ITU member, SES assumes that the Commission will give due respect to international priority and acknowledge that a request for the International Bureau to submit an ITU filing cannot block a later market access request by a foreign licensee with ITU priority.⁴⁹ However, the Commission should expressly address this matter in order to ensure that U.S. applicants and licensees are reminded that given the Commission's obligation to adhere to ITU policies, a U.S. licensee may not be able to operate at its requested location if coordination with the ITU priority holder is not completed.⁵⁰

⁴⁸ See Further Notice at ¶¶ 5-18.

⁴⁹ See, e.g., *Amendment of the Commission's Space Station Licensing Rules and Policies, First Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10760, 10870, ¶ 295 (2003) (noting that even when the Commission has issued a license to operate at a location where another administration has ITU priority, the license is subject to the outcome of international coordination).

⁵⁰ See *id.* at 10800, ¶ 96.

V. CONCLUSION

SES supports the Commission's significant efforts to undertake a broad update to the Part 25 rules and urges the Commission to revise its proposals consistently with the arguments expressed herein and in the pleadings of SIA.

Respectfully submitted,

**SES Americom, Inc. and
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